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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JOSUE SOTO Individually , on Behalf of
11 All Others Similarly Situated, and on
Behalf of the General Public ,

12 Plaintiff,

13 v.

14 DIAKON LOGISTICS (DELAWARE),
15 INC.,

16 Defendant,
17
18

AND RELATED COUNTERCLAIM
AND THIRD-PARTY COMPLAINT.

Civil No. 08cv33-L(AJB)

**ORDER DENYING AS MOOT
MOTION TO DISMISS
COUNTERCLAIM AND THIRD-
PARTY COMPLAINT**


19 Currently pending before the court is Cross-Defendant Josue Soto's ("Soto") motion to
20 dismiss counterclaim and Third-Party Defendant Saybe's LLC's ("Saybe's") motion to dismiss
21 third-party complaint (both doc. no. 20). Subsequently, Counterclaimant and Third-Party
22 Plaintiff Diakon Logistics (Delaware), Inc. ("Diakon") filed an amended counterclaim and an
23 amended third-party complaint. An amended complaint supersedes a prior complaint as a
24 pleading. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *Hal Roach Studios,*
25 *Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). A district court may treat as
26 moot a pending motion to dismiss a superseded pleading. Accordingly, Soto's motion to dismiss
27 the counterclaim and Saybe's motion to dismiss the third-party complaint (both doc no. 20) are

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1 hereby **DENIED AS MOOT**. This order is **WITHOUT PREJUDICE** to filing motions to
2 dismiss the amended counterclaim or the amended third-party complaint.

3 **IT IS SO ORDERED.**

4
5 DATED: June 9, 2008

6 
7 M. James Lorenz
United States District Court Judge

8 COPY TO:

9 HON. ANTHONY J. BATTAGLIA
UNITED STATES MAGISTRATE JUDGE

10 ALL PARTIES/COUNSEL